

Michael Pancier

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<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION CASE NO.: 1:22-cv-21004-DPG</p> <p>JESSICA GUASTO, PLAINTIFF, VS. THE CITY OF MIAMI BEACH, FL, A FLORIDA MUNICIPALITY, DEFENDANT.</p> <hr/> <p>DEPOSITION OF: MICHAEL PANCIER, ESQ. DATE: APRIL 15, 2024 TIME: 3:28 P.M. - 3:48 P.M. PLACE: VIA ZOOM REMOTE CONFERENCING REPORTED BY: TIMOFEY GARBUZ COURT REPORTER NOTARY PUBLIC, STATE OF FLORIDA</p>	<p style="text-align: center;">2</p> <p>1 APPEARANCES: 2 DANIEL B. BARROUKH, ESQ. 3 DEREK SMITH LAW GROUP, PLLC 4 520 BRICKELL KEY DRIVE 5 SUITE O-301 6 MIAMI, FLORIDA 33131-2433 7 (786) 688-2335 8 DANIELB@DEREKSMITHLAW.COM 9 COUNSEL APPEARING ON BEHALF OF THE PLAINTIFF. 10 11 12 13 MICHAEL L. ELKINS, ESQ. 14 MLE LAW 15 1212 NORTHEAST 16TH TERRACE 16 FORT LAUDERDALE, FLORIDA 33304 17 (954) 401-2608 18 MELKINS@MLELAWFIRM.COM 19 COUNSEL APPEARING ON BEHALF OF THE DEFENDANT. 20 21 22 23 24 25</p> <p style="text-align: center;">* * * * *</p> <p style="text-align: center;">S T I P U L A T I O N S</p> <p>It is hereby stipulated and agreed by and between counsel for the respective parties, and the deponent, that the reading and signing of the deposition are hereby waived.</p>
<p style="text-align: center;">3</p> <p>1 I N D E X 2 WITNESS 3 MICHAEL PANCIER, ESQ. 4 Direct Examination by Mr. Elkins 5 6 E X H I B I T S 7 DEPOSITION DESCRIPTION PAGE 8 Exhibit Number 1 EEOC Charge filed 7/13/20 6 9 Exhibit Number 2 Settlement Agreement 8 10 Exhibit Number 3 Email thread (Composite) 13 11 Exhibit Number 4 Request for Withdrawal of Charge 18 12 of Discrimination 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p>1 P R O C E E D I N G S 2 * * * * * 3 THE REPORTER: Do you swear or affirm that the 4 testimony you give in this matter shall be the truth, 5 the whole truth, and nothing but the truth, so help you 6 God? 7 THE WITNESS: Yes. 8 THE REPORTER: We may proceed. 9 MICHAEL PANCIER, ESQ., 10 Having been first duly sworn, testified as follows: 11 DIRECT EXAMINATION 12 BY MR. ELKINS: 13 Q. Good afternoon, Mr. Pancier. 14 A. Good afternoon. 15 Q. Can you just state your name for the record, 16 please? 17 A. Michael A. Pancier. 18 Q. Do you prefer if I call you Mr. Pancier or 19 Michael? You know you and I both -- 20 A. I don't care. I don't care. 21 Q. Okay. How long have you been a labor and 22 employment lawyer? 23 A. Since I was licensed, so since 1992. 24 Q. Fair to say you've been involved in a few 25 depositions in your career?</p>

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<p style="text-align: right;">5</p> <p>1 A. Yeah.</p> <p>2 Q. I am not going to go through the rules of a</p> <p>3 deposition because I suspect you already know them, other</p> <p>4 than to remind you, just as a refresher, as we all tell</p> <p>5 everybody, we can't talk over each other for the sake of our</p> <p>6 court reporter. But other than that, I think you know all</p> <p>7 the rules, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Good.</p> <p>10 Did you have an occasion to represent Jessica</p> <p>11 Salabarría also known as Jessica Guasto?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Just to be clear for the entirety of this</p> <p>14 deposition -- and you and I talked about this before -- I</p> <p>15 don't want to know, nor am I asking about anything that the</p> <p>16 two of you talked about. And even if one of my questions</p> <p>17 seems to go there, it's not intended to. So don't tell me</p> <p>18 anything that the two of you talked about.</p> <p>19 A. I won't.</p> <p>20 Q. I know. I just want to make clear I'm not asking</p> <p>21 either.</p> <p>22 What was the scope of your representation with</p> <p>23 Ms. Salabarría?</p> <p>24 A. Well, I believe I represented her on two different</p> <p>25 occasions, if memory serves me correct.</p>	<p style="text-align: right;">6</p> <p>1 Q. Okay.</p> <p>2 A. And --</p> <p>3 Q. Can you be specific?</p> <p>4 A. I believe I represented her the first time where</p> <p>5 she was demoted from I believe from a Sergeant's position,</p> <p>6 if I'm not mistaken, and I assisted her in the EEOC process.</p> <p>7 Q. And the second time?</p> <p>8 A. And the second time I believe it was for a</p> <p>9 retaliation claim where we filed a second EEOC claim, if I'm</p> <p>10 not mistaken.</p> <p>11 Q. And my questions today focus on the second EEOC</p> <p>12 charge. Let me just show you a copy of what I'll mark as</p> <p>13 Exhibit 1.</p> <p>14 (Deposition Exhibit Number 1 marked for</p> <p>15 identification.)</p> <p>16 BY MR. ELKINS:</p> <p>17 Q. This is -- can you see the document?</p> <p>18 A. Yes. Yes, I can.</p> <p>19 Q. This is an EEOC charge that Jessica filed -- I'll</p> <p>20 scroll down -- July 13th, 2020. Is this the charge in which</p> <p>21 you represented her and you referred to as sort of the</p> <p>22 second time you represented her?</p> <p>23 A. Yeah. You know, let me just take a look.</p> <p>24 Q. Take your time.</p> <p>25 A. I think there was a second page on this.</p>
<p style="text-align: right;">7</p> <p>1 Q. Yes, there is. I'll scroll.</p> <p>2 A. Okay. Yeah. Yes, this was the second charge.</p> <p>3 Q. Okay. One second.</p> <p>4 MR. ELKINS: And Tim, I think I need to give you</p> <p>5 the exhibits from the earlier depo as well. So when we</p> <p>6 are done here, don't leave. Sorry.</p> <p>7 BY MR. ELKINS:</p> <p>8 Q. Okay. In reference to that charge of</p> <p>9 discrimination that we've marked as Exhibit 1, did the City</p> <p>10 and your client, Jessica, engage in settlement discussions?</p> <p>11 A. Yes. And I believe the union was involved as</p> <p>12 well.</p> <p>13 Q. Correct. And was it Eugene Gibbons involved with</p> <p>14 the union?</p> <p>15 A. Yes.</p> <p>16 Q. And he was the union attorney, correct?</p> <p>17 A. Yes, correct.</p> <p>18 Q. Okay. Let's start with this: Did the parties</p> <p>19 ultimately reach a Settlement Agreement relating to that</p> <p>20 2020 -- July '20 EEOC charge?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And did you represent Ms. Salabarría also</p> <p>23 known as Ms. Guasto in conjunction with that Settlement</p> <p>24 Agreement? I'm not asking what you talked about. I just</p> <p>25 want to know if you were her lawyer?</p>	<p style="text-align: right;">8</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Let me show you a copy of that document.</p> <p>3 Okay. I'm going to scroll through this to confirm</p> <p>4 that this is the Settlement Agreement that relates to the</p> <p>5 2020 EEOC charge.</p> <p>6 (Deposition Exhibit Number 2 marked for</p> <p>7 identification.)</p> <p>8 BY MR. ELKINS:</p> <p>9 Q. So just tell me, first of all, this you can see</p> <p>10 here relates to Charge Number 510-2020-04794, which I'll</p> <p>11 represent to you is the same charge we just looked at.</p> <p>12 A. Okay.</p> <p>13 Q. And here, it talks about her withdrawing the</p> <p>14 charge, receiving 160-hour suspension, as well as paying</p> <p>15 back money to the City. Do you remember this agreement?</p> <p>16 A. Yes. Keep scrolling on there.</p> <p>17 Q. Sure.</p> <p>18 A. Okay. Yeah. Okay. Yeah. I remember the Last</p> <p>19 Chance Agreement, yes.</p> <p>20 Q. Okay. And you were one of Jessica's lawyers in</p> <p>21 conjunction with this Settlement Agreement, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Which also included a Last Chance Agreement, which</p> <p>24 I'm showing you now.</p> <p>25 A. Right.</p>

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<p style="text-align: right;">9</p> <p>1 Q. And is this the Last Chance Agreement that you 2 were one of the lawyers on? 3 A. Yeah, if you could just scroll to the end. Let me 4 just -- 5 Q. Of course. 6 A. Okay. Yes. 7 Q. Okay. So in entering into that Settlement 8 Agreement and the Last Chance Agreement, is it true or is it 9 fair to say that Jessica was represented by her union, a 10 private attorney, which was you, plus the union attorney? 11 A. Yes, the union was representing her with respect 12 to any remedy she had under the Collective Bargaining 13 Agreement and I was representing her on the EEOC matter 14 only. 15 Q. Okay. And in furtherance of entering into that 16 Settlement Agreement and the Last Chance Agreement, were you 17 party to a meeting between various City personnel and your 18 client in November of 2020? 19 A. Yeah. Along with Mr. Gibbons, the union attorney. 20 Q. Correct. Okay. So also present at that 21 November 2020 meeting was the union lawyer, you, myself, the 22 Chief of Police, the Director of Human Resources, the 23 Captain of Internal Affairs, I believe another Internal 24 Affairs investigator, the -- 25 A. Yeah, I don't -- I don't remember -- I know there</p>	<p style="text-align: right;">10</p> <p>1 were other individuals there, but I only have specific 2 recollection of you, the Chief, and, you know, myself and 3 Mr. Gibbons and Jessica. I don't remember who else from the 4 City was there. 5 Q. What was the purpose of the meeting? 6 A. The purpose of the meeting, to the best of my 7 recollection, was to basically have a settlement conference 8 where we can put everything on the table and see if we could 9 reach some type of a resolution. 10 Q. Do you remember Eugene Gibbons gave a speech at 11 the beginning of the meeting that the meeting was a 12 confidential settlement meeting? 13 A. I don't have any specific recollection of that. 14 It's possible. 15 Q. Okay. 16 A. I don't recall. 17 Q. Was the meeting to discuss both Jessica's pending 18 Internal Affairs investigation and the EEOC charge? 19 A. Yeah, because it was my understanding, if memory 20 serves me correct, that the IA, we deemed it to be 21 retaliatory, so that was one of the issues that was 22 obviously -- that we were, you know, basically discussing 23 everything, putting everything on the table and see, you 24 know, what the deal was. 25 Q. So there was no secret that the meeting</p>
<p style="text-align: right;">11</p> <p>1 encompassed both the Internal Affairs issues and the EEOC 2 charge? 3 A. That's correct. 4 Q. Okay. I'm going to show you some emails in a 5 minute, but I just have a few other questions about the 6 meeting. 7 At any point in the meeting during the group 8 discussion -- I'm not asking about what you and your client 9 may have talked about during caucus. But at any point 10 during the group discussion when everyone was present, did 11 you or Eugene Gibbons or anybody on behalf of your client 12 raise an issue that the meeting was an improper 13 interrogation under the Police Officer Bill of Rights? 14 A. I know I didn't. I don't have any recollection of 15 Mr. Gibbons raising that. 16 Q. Do you -- I'm sorry, go ahead. 17 A. The best that I recall was, you know, we all met 18 in a big conference room. And you know, we gave kind of our 19 respective positions. And I recall either you or someone on 20 behalf of the City -- I have a recollection of there being 21 some type of a projection or something that there was 22 some -- there was some records or some documents that you 23 guys showed us I guess supporting what the City's position 24 was that I recall. 25 Q. I believe A.J. Prieto may have done a Power Point</p>	<p style="text-align: right;">12</p> <p>1 presentation during the meeting. Is that what you're 2 referring to? 3 A. I remember something being projected. It was 4 either a Power Point. I don't know who was doing it, but 5 that's what I recall was done at the meeting. And I recall 6 the City basically saying, you know, this is the basis of 7 why we believe Jessica should be, you know, investigated or 8 disciplined, something along those lines. 9 Q. Do you recall anybody from the City questioning or 10 interrogating your client during that meeting? 11 A. No, there was no questioning. Basically, they 12 were presenting their side. And then, you know, we would 13 discuss things privately outside of the presence of the 14 City's people. But that was it. 15 Q. I just want to be very clear on this point because 16 it's an important point in this case. You do not recall -- 17 or actually, I think you said your client was not questioned 18 by the City during this meeting; is that correct? 19 A. Yeah. You know, I don't -- I don't recall any 20 type of interrogation or -- or testimony or anything like 21 that. Basically, from the best that I can recall was the 22 attorneys were mainly doing most of the talking. 23 Q. Okay. I'm going to show you what I'm marking as 24 Exhibit 3. Hold on. Give me one sec. 25 (Deposition Exhibit Number 3 marked for</p>

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<p style="text-align: right;">13</p> <p>1 identification.)</p> <p>2 BY MR. ELKINS:</p> <p>3 Q. Okay. Can you see these documents?</p> <p>4 A. Yes.</p> <p>5 Q. I guess this was really Composite Exhibit 3. It's</p> <p>6 a -- it's a series of emails between myself, you and Gene</p> <p>7 Gibbons. I just want to go through these very quickly. We</p> <p>8 are not going to spend a ton of time here. There's 27</p> <p>9 pages. We won't be going through all 27, but these are the</p> <p>10 emails, I'll represent to you, relating to scheduling that</p> <p>11 November meeting.</p> <p>12 So I just want to go through this first one. This</p> <p>13 is me writing to you and Gene. And here I said: "This</p> <p>14 email confirms that today I spoke to Gene about tolling the</p> <p>15 180-day period for Sgt. Salabarria's pending IA</p> <p>16 investigation and the FOP has no objection. This email</p> <p>17 further confirms that yesterday I spoke with Michael</p> <p>18 Pancier. And he represented that Sgt. Salabarria agreed to</p> <p>19 toll the 180-day period. Accordingly, the 180-day period is</p> <p>20 tolled as of the date of this email. Michael," referring to</p> <p>21 you, "and I further discussed Sgt. Salabarria's agreement to</p> <p>22 an extension of time for the City to respond to the pending</p> <p>23 EEOC charge. This tolling and extension are pursuant to the</p> <p>24 parties' agreement to engage in settlement discussions to</p> <p>25 possibly resolve the pending IA investigation and pending</p>	<p style="text-align: right;">14</p> <p>1 EEOC charge. I will touch base early next week to</p> <p>2 coordinate scheduling a meeting between the parties for</p> <p>3 purposes of discussing settlement."</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever seen this email before, Michael?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And is this email an accurate</p> <p>8 representation of what occurred at this time concerning your</p> <p>9 client's pending EEOC charge and pending IA investigation?</p> <p>10 A. Yeah, that confirms what we were discussing during</p> <p>11 that time period.</p> <p>12 Q. Do you know what the 180-day period is, like, as a</p> <p>13 general principle or rule?</p> <p>14 A. If memory serves me correct, I believe under the</p> <p>15 Bill of Rights -- and I know there's been changes to it, but</p> <p>16 from what I can recall, they have a certain amount of time</p> <p>17 to complete the investigation unless there's an overriding,</p> <p>18 you know, basis to extend it.</p> <p>19 Q. And there are certain -- there are certain ways</p> <p>20 that 180. You're correct. And there are certain ways the</p> <p>21 180-day period can be tolled. Like, for example, if there's</p> <p>22 a pending criminal investigation, the 180-day period</p> <p>23 automatically tolls on the civil side or it could be tolled</p> <p>24 by agreement. Correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">15</p> <p>1 Q. And here, the union and your client agreed to toll</p> <p>2 that 180-day period, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And the purpose of that was so that everything</p> <p>5 could be discussed together, correct? By everything, I</p> <p>6 mean, resolving potentially the IA investigation issues and</p> <p>7 the EEOC charge, correct?</p> <p>8 A. Yeah. I mean, to basically, if today we discuss</p> <p>9 all family business, so basically everything on the table</p> <p>10 and see if we could work it out.</p> <p>11 Q. That is an excellent -- that is an excellent</p> <p>12 Godfather reference.</p> <p>13 Just to be clear: There's no other reason -- in</p> <p>14 this case, there would have been no other reason to toll the</p> <p>15 180-day period other than to discuss settlement, correct?</p> <p>16 A. As far as I know. I mean, it would make sense.</p> <p>17 Q. And the 180-day period is really there as a</p> <p>18 general rule for the benefit of the officer so that</p> <p>19 municipalities don't delay discipline too long, correct?</p> <p>20 A. Correct. In fact, I've have cases, you know, IA's</p> <p>21 tossed because they didn't complete the investigation</p> <p>22 properly within the timeframe.</p> <p>23 Q. And in this case, your client agreed to toll that</p> <p>24 180-day period for settlement discussions; is that right?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">16</p> <p>1 Q. Okay. Scrolling down. Now, we are going to go to</p> <p>2 an email from --</p> <p>3 A. Yourself to the EEOC.</p> <p>4 Q. No, we're not going to talk about that.</p> <p>5 A. Okay.</p> <p>6 Q. Okay. This is an email from me to both you and</p> <p>7 Gene Gibbons, dated October 6th, 2020. It says: "All: I</p> <p>8 am looking to set the meeting for the Salabarria settlement</p> <p>9 discussions. I thought it would be easiest to get your best</p> <p>10 dates and then I will work around those with the City. My</p> <p>11 suggestion is you both give me dates for October, November</p> <p>12 and December. I have a packed October and November, but I</p> <p>13 will try to make this happen then, but give me December</p> <p>14 dates just in case."</p> <p>15 Do you remember receiving this email?</p> <p>16 A. Yes.</p> <p>17 Q. And was this again to have a meeting to resolve</p> <p>18 both the EEOC charge and the IA case?</p> <p>19 A. Yes, to both, everything.</p> <p>20 Q. And that's why the email includes both you and</p> <p>21 Mr. Gibbons; is that right?</p> <p>22 A. Well, we were both involved, so I mean, you</p> <p>23 drafted it, but yeah, I mean basically, it was for all the</p> <p>24 parties to be there to resolve the, you know, her rights</p> <p>25 under the Collective Bargaining Agreement and obviously her</p>

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<p style="text-align: right;">17</p> <p>1 EEOC rights.</p> <p>2 Q. Okay. And then this next email from you is you</p> <p>3 providing dates for October and November, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And then, this email is Gene responding saying</p> <p>6 that your schedule works for him and he wanted to set this</p> <p>7 up ASAP, correct?</p> <p>8 A. That's what it says, correct.</p> <p>9 Q. And here on October 30th, I'm emailing you --</p> <p>10 A. No, I'm emailing you.</p> <p>11 Q. Sorry. You're emailing me confirming the meeting</p> <p>12 on Monday at 10 A.M. and confirming the location and the</p> <p>13 parking situation.</p> <p>14 Is that the November settlement meeting that you</p> <p>15 were confirming?</p> <p>16 A. I guess whatever that Monday would have been.</p> <p>17 I'm -- yeah, it would have been November 2nd, I guess. This</p> <p>18 was on a Friday.</p> <p>19 Q. Correct. Saturday would have been October 31st.</p> <p>20 Sunday would have been November 1st. So Monday would have</p> <p>21 been November 2nd?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And why did you include Eugene Gibbons on</p> <p>24 this email?</p> <p>25 A. Because he was supposed to be there.</p>	<p style="text-align: right;">18</p> <p>1 Q. And he was -- was he ultimately there?</p> <p>2 A. Yes.</p> <p>3 Q. And then I believe I respond to you that the</p> <p>4 meeting's confirmed and the location is the police</p> <p>5 department. Is that true? Do you see that?</p> <p>6 A. Correct, yeah.</p> <p>7 Q. I'm just making sure there's nothing else here I</p> <p>8 need to ask you about.</p> <p>9 Okay. And I just have one more document to show</p> <p>10 you.</p> <p>11 Okay. This is the EEOC's form Request for</p> <p>12 Withdrawal of Charge of Discrimination. Do you see the</p> <p>13 form?</p> <p>14 A. Yes.</p> <p>15 (Deposition Exhibit Number 4 marked for</p> <p>16 identification.)</p> <p>17 BY MR. ELKINS:</p> <p>18 Q. Did you file this on behalf of your client?</p> <p>19 A. Yes.</p> <p>20 Q. Is that your client's signature?</p> <p>21 A. Yeah, it's her electronic signature.</p> <p>22 Q. And what's the reason for the withdrawal?</p> <p>23 A. Settlement.</p> <p>24 Q. And that's settlement of both the EEOC charge and</p> <p>25 the Internal Affairs investigation and the Settlement</p>
<p style="text-align: right;">19</p> <p>1 Agreement and Last Chance Agreement we entered into, was all</p> <p>2 of that a product of the November 2nd, 2020 meeting that we</p> <p>3 originally had?</p> <p>4 A. To the best of my recollection, yes.</p> <p>5 Q. And were there some additional settlement</p> <p>6 negotiations that happened between the City, your office and</p> <p>7 Gene to come to the final Settlement Agreement which was</p> <p>8 signed in December?</p> <p>9 A. From the best of my recollection, maybe on the</p> <p>10 language, but I mean, I don't have any specific, you know,</p> <p>11 recollection of, you know, of the back and forth on there,</p> <p>12 but I recall we worked on an agreement and then we reached</p> <p>13 an accord, and we had everybody sign off on it.</p> <p>14 Q. Let me ask the question a different way. That was</p> <p>15 probably a bad question. And this is my last question: Was</p> <p>16 the Settlement Agreement and the Last Chance Agreement a</p> <p>17 negotiated arm's length negotiated agreement between all of</p> <p>18 the parties?</p> <p>19 A. Yes.</p> <p>20 MR. ELKINS: Nothing further.</p> <p>21 MR. BARROUKH: I have nothing further either.</p> <p>22 THE WITNESS: I'll waive.</p> <p>23 MR. ELKINS: You're going to waive. All right.</p> <p>24 Cool.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">20</p> <p>1 (Deposition concluded at 3:48 P.M.)</p> <p>2</p> <p>3 CERTIFICATE OF OATH</p> <p>4 STATE OF FLORIDA</p> <p>5 COUNTY OF BROWARD</p> <p>6 I, TIMOFEY GARBUZ, Notary Public, State of Florida,</p> <p>7 certify that MICHAEL PANCIER, ESQ. personally appeared</p> <p>8 before me via Zoom on the 15th day of April 2024 and was</p> <p>9 duly sworn.</p> <p>10 Signed this 15th day of April 2024.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>_____ TIMOFEY GARBUZ Notary Public State of Florida My Commission #HH 284028 Expires July 5, 2026</p>

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REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, TIMOFEY GARBUSZ, Court Reporter, certify that I was authorized to and did report the Deposition of MICHAEL PANCIER, ESQ.; that a review of the transcript was not requested; and that the foregoing transcript, pages 1-19, is a true and complete record of my notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 20th day of April 2024.

TIMOFEY GARBUSZ
COURT REPORTER

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CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

510-2020-04794

Florida Commission on Human Relations

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Jessica Sallabarría

Home Phone (Incl. Area Code)

Date of Birth

1991

Street Address

City, State and ZIP Code

117 NW 42nd Ave # 1008, Miami FL 33126. [Confidential per Fla. Stat. s. 119.071 – Do not disclose in FOIA]

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

City of Miami Beach – Police Department

No. Employees, Members

15-100

Phone No. (Include Area Code)

305-673-7901

Street Address

City, State and ZIP Code

1100 Washington Avenue

Miami Beach, FL 33139

☐ RACE☐ COLOR☒ SEX☐ RELIGION☒ NATIONAL ORIGIN☒ RETALIATION☐ AGE☐ DISABILITY☐ GENETIC INFORMATION☐ OTHER (Specify)Earliest
09/2019

Latest

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I am female. I had a previous EEOC Claim against the City which was resolved in full when I reinstated to the position of Sergeant in September 2019. After I resolved my prior EEOC complaint, I started to receive sexually explicit text messages from a command staff member. I did not report the harassment for fear of retaliation as I was on a probationary status after being reinstated to Sergeant and given that another female sergeant in the department also reported sexual harassment and was retaliated against. Also, after I resolved my prior EEO Complaint, I had an issue in October or November of 2019 where Lieutenant Garcia was screenshotting personal pictures of my social media and forwarding it to the whole police station. Within a few days my personal pictures were on the phones of most of my colleagues. This was humiliating and mortifying. My colleagues were talking about the photograph and would come up to me to show me and when I asked, they said it come from Lieutenant Eduardo Garcia. Lieutenant Garcia used to ask me to join him for breakfast or to work out in the gym and when I would say no, he would get cold with me. He pulled me aside and attacked my personality, saying I needed to be more of an extrovert and less of an introvert.

From February 2020 and onward, I was subjected to a hostile environment such as when my supervisors and others openly engage in sexually inappropriate and offensive comments and viewing pornographic videos in the workplace on their cellphones. The Lieutenants and Sergeants would openly laugh and make comments like "this is how so and so got the new position, or this is what you have to do around here to get in a specialized unit." Captain M. Rivero has been present while sergeants and lieutenants make sexual innuendo comments and she would laugh about it and not stop the behavior. I have been subjected to listening to my colleagues talk about penis enlargements and detail how the procedure is done. I have had to listen to some of my colleagues disparage black supervisors and use derogatory comments like "these negroes are entitled and racist." I continuously have to listen to all my male colleagues who hold supervisory positions talk about women and sex on a constant basis.

Continued on following page

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

7/13/2020

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

 1/13/2020
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year) July 13th, 2020

EDUARDO PAZ
MY COMMISSION # GG 054055
EXPIRES: January 9, 2024
Bonded thru Notary Public Underwriters

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

Florida Commission on Human Relations

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Continued from page 1

In or about February of 2020, I had another Lieutenant asking several sergeants whom he saw speaking to me if they were sleeping with me. This Lieutenant also made comments such as I could rule the department if sleep my way to the top. I've also had a Major inappropriately grabbing my wrist in an inappropriate manner under the guise to personally inspect my tattoo and then he started to ask me personal questions about my relationship status.

Another situation in Feb/Mar 2020 occurred when a male Sgt. was verbally counseled for violating a state emergency order by having lunch in a restaurant after the city and governor advised no person shall eat inside any establishment. He was seen eating inside a restaurant with two (2) other officers. The officers and the sergeant did not receive any discipline. Instead, I was punished by being switched with the sergeant in lieu of the sergeant receiving discipline. Lieutenant Flanagan, Lieutenant Baldwin, and Lieutenant Dohler advised me verbally of the switch in area of responsibility and stated they are making this switch to protect the male sergeant from receiving formal written discipline.

In March or April of 2020, I was having a conversation with a Lieutenant when I told him that an officer would be coming in a couple hours late due to a dental visit where he would be getting a tooth filling. The Lieutenant responded with "what is he doing? A rectum filling?" A few weeks later, the Lieutenant started to imitate sexual acts in the workplace and saying, "this is what Andrew Gillum was doing last night" he also made a comment that the Covid-19 temperature checks were going to be conducted through the rectum.

I've also been subjected to disparate treatment. For example, even though command staff has stated that we need to have less contact with the public due to Covid, In May 2020, Ast Chief Acosta threatened to send me home if my vehicle didn't move much from the station which is uncomfortable considering the fact sergeants and lieutenants sleep on duty in the office and in their cars while working in front of me or in front of their supervisors. Yet no one tells them to move their vehicles.

In April 2020, my personal cell phone had run out of battery during my tour of duty and I left it in the car charging. One of my Lieutenants demanded me to respond to the Lieutenant's office and demanded to see my personal cell phone to check its battery life. I stated that her phone was in the car charging and that it was out of battery. I felt targeted and harassed as I had never seen anyone else be required or having been demanded to produce their personal phone for inspection by a supervisor. As I exited, I was contacted by several other supervisors who were appalled at this treatment and advised me that the Lieutenant had planned to make this request of her. That he stated verbatim "I know she's lying and when she walks in here, I am going to ask to see her phone."

Also on April 22, 2020, I was on the phone with Lt. Dohler and told him I was running late because I had a personal emergency due to a gastrointestinal issue. I had severe stomach cramps and could not hold the pain or keep from using the restroom. I had to shower again. As I was on my way in, the Lieutenant radioed me and asked what restroom I was in. I advised the lieutenant that I would be in the 5th-floor range restroom because that was the restroom I was headed towards. I was running up the station garage stairs because I had to use that restroom and I knew that would be the only one stall restroom I could use to maintain privacy and dignity. When I arrived, the lieutenants would be waiting for me outside the restroom door in a tactical position sneaking around standing in front of the restroom. When I walked in, I found both lieutenants in that position and asked what they were doing. They demanded to know who was in the restroom and who was I with. I was confused as to why they would be asking her this when I told Lieutenant Dohler of my emergency. I was humiliated due to this incident. Later, the same lieutenant filed an internal affairs complaint based on this incident which is currently pending.

When the above comments and behavior takes place in the workplace, I remove myself from the situation, but then I am criticized for not being a team player or for being an introvert.

In June of 2020, I had Lieutenant make comments in front of me that it's the Hispanics causing riots in Miami and making the protests violent, knowing very well I am a Hispanic female.

I have also had co-workers tell me that they did not want to be associated with me specifically because of my prior harassment/discrimination complaints.

I believe that I was subjected to sexual harassment and sexual discrimination, national origin discrimination, and retaliation because of my objections and complaints of the discriminatory behavior in the workplace in violation of Title VII of the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, as amended.

SETTLEMENT AGREEMENT

The SETTLEMENT AGREEMENT ("Agreement") is entered into, by, and between the CITY OF MIAMI BEACH, its elected and appointed officials, its employees, and its insurers, attorneys, or agents of any kind (collectively, the "City"); JESSICA SALABARRIA ("Salabarria") and the FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8 ("FOP") (all collectively, the "Parties").

WHEREAS, Salabarria is employed by the City in its Police Department; and

WHEREAS, the FOP is the exclusive bargaining representative for a bargaining unit of City police employees, including Salabarria; and

WHEREAS, Salabarria is the subject of an on-going Internal Affairs investigation, I.A. Case No. 2020-010 ("the Investigation"); and

WHEREAS, Salabarria has filed an EEOC Charge, EEOC Charge No. 510-2020-04794 ("EEOC Charge"); and

WHEREAS, the Investigation and EEOC charge are all pending and constitute all the charges, investigations and grievances by or on behalf of Salabarria that have been or may be filed as of the Effective Date of this Agreement that have not otherwise been resolved or otherwise achieved finality; and

WHEREAS, the Parties, wish to avoid the burdens of further investigation, litigation and to resolve the disputes between them.

NOW, THEREFORE, intending to be legally bound but without setting precedent, do hereby agree as follows:

1. Recitals. The Parties acknowledge and agree that the Recitals above are true to the best of their knowledge and belief and incorporate them as if fully set forth here and that the Recitals are a material inducement for the Parties to enter into this Agreement.

2. EEOC Charge Withdrawn With Prejudice and Discipline. Salabarria and the FOP agree that, by executing this Agreement, they will simultaneously withdraw the Charge with prejudice by executing the attached Notice of Withdrawal with Prejudice and immediately filing same with the EEOC. Additionally, as discipline for the matters that are the subject of the Investigation, Salabarria agrees to accept the following:

- a. A One Hundred and Sixty (160) hour suspension,
- b. Payback of Eighty-Six (86) total hours, of which Forty-Four (44) Hours is regular time and Twenty-Four (24) hour is overtime. The regular rate is Forty-Four Dollars and 14/100 (\$44.14) for a total of One Thousand Nine Hundred Forty-Two Dollars and 00/100 (\$1,942.16) of regular time. The overtime hourly rate is Sixty-Six Dollars and 21/100 (\$66.21), for a total amount of One



Thousand Five Hundred Eighty-Nine Dollars and 04/100 (\$1,589.04). **Accordingly, the Total Amount due to the City is Three Thousand Five Hundred Thirty-One Dollars and 20/100 (\$3,531.20) (“the Total Amount”).** Salabarria can pay the Total Amount via a cashier’s check made payable to the City of Miami Beach on or before January 4, 2021. If the City does not receive full payment on or before 5:00 p.m. on January 4, 2021, then the City is authorized to deduct the remaining amounts due from Salabarria’s vacation leave bank.

- c. Salabarria will execute the attached Last Chance Agreement, which contains additional provisions. The Last Chance Agreement is incorporated by reference into this Agreement.
- d. Permanent deletion, from all platforms (platforms includes but is not limited to: Apple Podcasts, Stitcher, Spotify, Spotify Podcasts, Google Play Music, Google Podcasts, iHeart Radio, and any other social media and/or electronic platform) the podcast titled: “Cafecitos y Chisme with Nick & Jess.”
- e. Salabarria will immediately have a meeting with the Chief of Police wherein she will address the claims made in the Charge, including but not limited to identifying the names of all persons who allegedly engaged in the conduct addressed in the Charge. The refusal to name the persons who have allegedly engaged in the conduct in the Charge shall be grounds for immediate termination, as discussed in the attached Last Chance Agreement. Salabarria shall be entitled to have a Union Representative with her during this meeting.

f. Release Of Claims, Covenant Not To Sue. Salabarria hereby releases and waives any and all claims of any kind whatsoever against the City that she had, has or may have from the beginning of the world through the date of this Agreement. The claims released include, but are not limited to, any and all claims arising under any federal, state, local or foreign statute or regulation, including, without limitation, those relating to any and all unfair or discriminatory employment practices (for example, employment discrimination based on race, national origin, sex, religion, age, disability or handicap, and harassment of any kind) under the federal Civil Rights Acts of 1866, 1871, 1964 and 1991 (including Title VII), the federal Age Discrimination in Employment Act (“ADEA”), including the Older Workers Benefits Protection Act, the Florida Civil Rights Act, the federal Americans With Disabilities Act, the federal Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the federal Fair Labor Standards Act of 1938, the Florida Wage Discrimination Law, the Florida Wage and Hour laws, Florida and federal statutes regarding “whistleblower” activities, the federal Family and Medical Leave Act of 1993, the federal Rehabilitation Act of 1973, the Consolidated Omnibus Budget Reconciliation Act of 1985 (known as “COBRA”), the Federal Fair Credit Reporting Act, any other federal and state employment-related statutes and regulations, and any other employment-related local ordinance up to the date of this Agreement. The claims released also include any claims under the United States Constitution, including but not limited to claims arising under the First Amendment or any other claims whatsoever.

The disputes released by Salabarria also include any and all disputes she had, has or may believe to have against the City in contract or at common law, including, but not limited to: breach of oral, written and/or implied contract, breach of an implied covenant of good faith and fair dealing, wrongful discharge under any theory (including for lack of good cause) in violation of public policy and constructive discharge, intentional and/or negligent infliction of emotional distress, negligent retention and/or supervision, assault, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty, invasion of privacy, defamation, and interference with contract and/or prospective economic advantage up to the date of this Agreement.

Salabarria further covenants and agrees that she will not file a lawsuit or claim of any kind asserting the claims released herein. Salabarria understands that this Agreement does not prohibit participating in an investigation or the filing of a charge with the EEOC or like administrative agency, but she does understand and agree that, not only is she releasing the stated claims, but also is releasing the right to any monetary damages or any relief of any kind from those claims, whether brought by her or on her behalf. Salabarria hereby represents that she has not assigned to any person or entity any rights to the claims released herein.

g. Effect; Precedent. The Parties agree that Salabarria remains subject to all applicable rules, policies, orders, procedures or regulations of whatever kind, except as may be expressly otherwise provided herein. The Parties agree that the facts underlying this Agreement are unique and that this Agreement does not establish precedent of any kind whatsoever and may not be used in any manner whatsoever in any proceeding, including but not limited to any labor proceeding of any kind, with the exception of any labor proceeding involving Salabarria. The parties further agree that Salabarria's prior settlement agreement may also be used in any labor proceeding involving Salabarria.

h. Consideration. The consideration for this Agreement is the City's early conclusion of the Investigation. The parties acknowledge that the City could continue the Investigation. The parties further acknowledge that continuing the Investigation would likely be detrimental to Salabarria. Therefore, the City is giving up its right to continue the Investigation in exchange for Salabarria's agreement to the provisions and terms of this Agreement. The mutual promises, releases, and forbearances recited herein, the adequacy of which is hereby affirmed by the Parties.

i. Miscellaneous. This Agreement (which includes the exhibits attached hereto that are incorporated by reference), is the entire agreement between the Parties on its subject matter and supersedes any other agreement or understanding whatsoever, whether written or oral. The Parties have entered into this Agreement solely on the basis of the language, representations, and understandings expressed in this Agreement and not on the basis of any other representation or understanding whatsoever. This Agreement shall be construed and applied according to its express language and not strictly against any Party, regardless of authorship. This Agreement shall be governed by and construed according to the laws of the State of Florida. Any dispute arising from this Agreement, its application, or its breach shall be heard by a judge and not a jury. The Parties agree that venue shall be proper in Miami-Dade County, Florida, and agree that they shall not challenge such venue, regardless of convenience. If any provision or part thereof of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain valid and enforceable, provided, however, that if Paragraph 3, "Release,"

is found invalid or unenforceable, the entire Agreement shall fail and be null and void and shall be treated as if it were never made. The prevailing party in any action of or relating to this Agreement shall be entitled to an award of reasonable attorney's fees and costs.

IN WITNESS WHEREOF, having read and fully understood this Agreement in its entirety, having duly considered the same, and intending to enjoy the benefits and undertake the obligations established herein, the Parties do hereby enter into and execute this Agreement as set forth below.

CITY OF MIAMI BEACH

DocuSigned by:
By Paul J. Aguila
City Manager 2B3D6240F92B45D...

12/23/2020 | 1:34 EST
DATE

JESSICA SALABARRIA


JESSICA SALABARRIA

12/18/2020
DATE

**FRATERNAL ORDER OF
POLICE, LODGE 8**

By 
KEVIN MILLAN
President

12/18/2020
DATE

CHIEF OF POLICE


RICK CLEMENTS
Chief of Police

LAST CHANCE AGREEMENT

THIS LAST CHANCE AGREEMENT is entered into between the CITY OF MIAMI BEACH, FLORIDA (hereinafter, the “City”), FRATERNAL ORDER OF POLICE, (hereinafter, “the Union”) and JESSICA SALABARRIA (hereinafter, “SALABARRIA” or “Employee”).

WHEREAS, SALABARRIA is employed by the City as a Police Officer in the City’s Police Department.

WHEREAS, SALABARRIA is subject to the terms and conditions of employment contained in the Collective Bargaining Agreement between the Union and the City effective October 1, 2018 through September 30, 2021;

WHEREAS, SALABARRIA is the subject of an Internal Affairs (“IA”) Investigation, IA Case Number 2020-010, which arose from SALABARRIA’s involvement in not being on-duty when she was supposed to be, and from SALABARRIA’s claims of being on-duty in the City when she was actually outside the City;

WHEREAS, the City wishes to continue to employ Employee, Employee wishes to continue to be employed by the City, and the FOP desires for Employee to continue to be employed under the terms and conditions described herein; and

WHEREAS, the Employee admits that she committed misconduct in association with IA Case Number 2020-010 and was in violation of numerous City and Police Department policies and the City Personnel Rules for the Classified Service; and

WHEREAS, the purposes of this Agreement, with which all the Parties concur, include: to protect and preserve the integrity of the Police Department and all its officers and to give Employee the opportunity to further and support that purpose; and to give Employee the



CITY

Page 1 of 7



UNION



JESSICA

City 001240

opportunity to rehabilitate herself personally and as a police sergeant for the City and this Department; and to give Employee an opportunity to preserve her career.

NOW, THEREFORE, without establishing precedent for any purpose and intending to be bound, the Parties agree as follows:

1. All of the above statements are true and correct to the best of the Parties' belief and knowledge and for a five (5) year period beginning with the execution of this Agreement by all parties, SALABARRIA will be subject to the provisions of this Agreement.

2. During this period, SALABARRIA must be on-duty and in the City limits during all of her scheduled shifts unless given prior authorization. For the avoidance of confusion, this means that, during the terms of this Agreement, SALABARRIA shall not be outside the City limits when she is on-duty, shall not tell the City she's on-duty when she is outside the City's limits, and shall not leave before the end of her scheduled shift, unless given prior authorization.

3. Additionally, SALABARRIA shall refrain from violating any City or Police Department policies, rules or regulations; Standard Operating Procedures ("SOPs") or Personnel Rules, all of which (including any amendments or additions) are incorporated herein by reference. In any instance during which City or Police Department policies, procedures or Personnel Rules differ from or conflict with the stipulations set forth in the applicable collective bargaining agreement, the City or Police Department policies, procedures or Personnel Rules shall prevail.

4. The Chief of Police shall exclusively assess and determine Employee's compliance with this Agreement. The Chief's decision as to compliance with this Agreement shall not be subject to any grievance and/or review of any kind by SALABARRIA and/or the Union and is not subject to explanation or review.


CITY

Page 2 of 7


UNION


JESSICA

City 001241

5. Failure to comply with any portion or requirement of this Agreement (including but not limited to the requirement not to violate any City or Police Department policies, Standard Operating Procedures ("SOPs") or Personnel Rules, as referenced in paragraph 3 above) may result in the immediate implementation of the attached letter of resignation as referenced in paragraph 9 below. It is the intent and understanding of the parties that the violations contemplated to trigger the implementation of the attached letter of resignation shall not be for individual, discreet minor policy and procedural violations. The parties agree that repeated violation of the same, discreet minor policy may result in an event triggering the implementation of the attached letter of resignation. In that event, the Employee and the Union understand and agree there will be no recourse or review available pursuant to any grievance, appeal or review process under any federal, state or local statute, ordinance, collective bargaining agreement, or in any other forum or under any other process or procedure.

6. SALABARRIA shall serve a four-week (160 hour) suspension without pay and waive any and all rights to grieve or appeal that suspension. Employee shall also be subject to the additional provisions of the Settlement Agreement to which this Agreement is attached and is made part of via incorporation by reference.

7. Further, for the same five (5) year period described above, the Chief of Police shall have full discretion regarding Employee's assignments, including, without limitation, duties, supervisor and chain of command. Employee shall have the ability to bid for shift and days off, if the employee is reassigned her duty hours and days off shall remain the same.

8. For a period of one (1) year from the date of execution of this Agreement, Employee is not eligible for any promotional opportunities.


CITY

Page 3 of 7


UNION


JESSICA

City 001242

9. Employee shall sign an irrevocable letter of resignation which shall take effect immediately upon her violation of this Agreement or any part of it at any time during the term of this Last Chance Agreement. .

10. Employee shall attend and cooperate with any training required by the Chief of Police.

11. If during the above-referenced five (5) year period, SALABARRIA violates any provisions of this agreement or any City or Police Department policies, Standard Operating Procedures ("SOPs") or Personnel Rules and/or regulations as previously referenced in paragraph #4 , her resignation shall be effective , without the right to grieve or otherwise contest, in any manner, her separation. .

12. In the event that SALABARRIA is separated pursuant to the terms and conditions of this Last Chance Agreement, she and the Union understand that her separation is not subject to appeal pursuant to the contractual grievance/arbitration procedure, or otherwise. In other words, SALABARRIA agrees that should she be separated pursuant to the terms of this agreement that she waives her right to utilize the contractual grievance and arbitration procedure and she further waives the right to challenge or appeal her separation pursuant to any administrative or statutory avenue that may exist.

13. The City retains the right to rely upon the facts and circumstances of the events from which this Last Chance Agreement arose in any future proceeding in the event the Employee successfully meets the terms and conditions referred to in this Agreement but thereafter has deficiencies in conduct or performance, and such deficiencies shall be sufficient to warrant discipline, including dismissal.



CITY

Page 4 of 7



UNION



JESSICA

City 001243

14. It is understood and agreed by all parties hereto that this Last Chance Agreement is executed based on the particular circumstances of this case and does not establish precedent for the resolution of other cases.

15. SALABARRIA acknowledges that she could be terminated from her employment from the City as a result of her conduct as referenced above and that remaining employed by the City is adequate consideration for entering into this Last Chance Agreement, serving the suspension without pay and waiving the rights described herein and in the Settlement Agreement.

16. SALABARRIA being of lawful age, for and in consideration of the above-action agreed to by the City, and other valuable consideration received from or on behalf of the City, receipt whereof is hereby acknowledged, does hereby release, acquit, satisfy and forever discharge the City, as well as each and everyone of the City's former and current officers, agents, attorneys, employees and officials -- in both their official and individual capacities -- and their successors and assigns, from any and all claims, cause and causes of action, grievances, unfair labor practice charges, lawsuits, claims of employment discrimination (including, but not limited to claims under the Americans With Disabilities Act), and any and all other claims and demands whatsoever, in law or in equity, tort or contract, which SALABARRIA has or may have against the above-named individuals in both their individual and official capacities, from the beginning of the world until today, including, but not limited to, all matters concerning or arising out of her employment with the CITY, her discipline stemming from the incidents described in this Last Chance Agreement and the execution of this Last Chance Agreement.

17. It is understood and agreed that this Last Chance Agreement does not constitute an admission by the City or SALABARRIA of any violation of the collective bargaining


CITY


UNION


JESSICA

agreement. This Last Chance Agreement is being entered into by the parties solely for the purpose of avoiding the expense and inconvenience of further administrative proceedings.

18. SALABARRIA has received and reviewed this Last Chance Agreement prior to executing it and she agrees to be bound by its terms and conditions.

19. Prior to signing this Last Chance Agreement, SALABARRIA had the opportunity, and did, in fact, consult with her attorney and/or with the Union.

20. This Last Chance Agreement, and the Settlement Agreement which is attached constitutes the entire understanding and agreement of the parties hereto, and can be modified, amended or revoked only by express written consent of all parties.

21. This Last Chance Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and where applicable, federal laws. The language of this Last Chance Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

22. In the event that any party to this Last Chance Agreement institutes legal proceedings regarding the terms of this Last Chance Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, and not by a jury, in Miami-Dade County, Florida. **SALABARRIA AGREES AND UNDERSTANDS THAT SHE IS WAIVING THE RIGHT TO A JURY TRIAL, IF ONE EXISTS, AS TO ANY CLAIM REGARDING THE TERMS OF THIS AGREEMENT.**

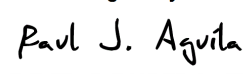

CITY


UNION


JESSICA
City 001245

This Agreement is dated the ____ day of December 2020, in Miami-Dade County, Florida.


JESSICA SALABARRIA

DocuSigned by:

2B3D6240F92B45D...
CITY MANAGER
CITY OF MIAMI BEACH

Date: 12/18/2020

Date: 12/23/2020 | 1:34 EST

FRATERNAL ORDER OF POLICE

 President
Signature & Title

Kevin Millan President
Print Name & Title

12/18/2020
Date


CHIEF OF POLICE

12/18/2020
Date

Thursday, April 11, 2024 at 21:53:11 Eastern Daylight Time

Subject: Sallabarria - Tolling Period for IA Investigation

Date: Wednesday, September 23, 2020 at 11:21:09 PM Eastern Daylight Time

From: Michael Elkins

To: Eugene Gibbons, Michael Pancier



Gene/Michael,

This email confirms that today I spoke to Gene about tolling the 180 day period for Sergeant Sallabarria's pending IA investigation and the FOP has no objection.

This email further confirms that yesterday I spoke with Michael Pancier and he represented that Sergeant Sallabarria agreed to toll the 180 day period.

Accordingly, the 180 day period is tolled as of the date of this email.

Michael and I further discussed Sergeant Sallabarria's agreement to an extension of time for the City to respond to the pending EEOC Charge.

This tolling and extension are pursuant to the parties' agreement to engage in settlement discussions to possibly resolve the pending IA investigation and pending EEOC Charge.

I will touch base early next week to coordinate scheduling a meeting between the parties for purposes of discussing settlement.

Kind regards,



Michael L. Elkins

Founder | Partner

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Thursday, April 11, 2024 at 21:53:48 Eastern Daylight Time

Subject: Re: Jessica Sallabarría vs. City of Miami Beach Police Dept 510-2020-04794
Date: Tuesday, October 6, 2020 at 8:23:00 PM Eastern Daylight Time
From: Michael Elkins
To: SUSAN DIAZ
CC: Michael Pancier

Ms. Diaz,

I have copied Charging Party's counsel on this email. Charging Party and the City have entered into settlement discussions to resolve the matter pending before the EEOC as well as other matters relating to Charging Party's employment.

As part of an agreement to enter into those discussions, and due to the possibility that the discussions may take some time given the number of persons involved, Charging Party agreed to an unopposed extension of time of 60 days for the City to file its position statement. This will allow the parties sufficient time to work to resolve all matters, will save attorney's fees for the City in having to file a position statement, and will allow the City to devote its resources to working towards resolution of Charging Party's claim.

Please let me know if the EEOC is agreeable to this unopposed extension of time.

Kind regards,



Michael L. Elkins

Founder | Partner

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From: SUSAN DIAZ <SUSAN.DIAZ@EEOC.GOV>
Date: Tuesday, October 6, 2020 at 1:05 PM
To: Michael Elkins <melkins@mlelawfirm.com>
Subject: RE: Jessica Sallabarria vs. City of Miami Beach Police Dept 510-2020-04794

Dear Mr. Elkins:

Just a reminder that your response is due on or before 10/14/20. Please upload your response via portal system and send me a courtesy email once it has been uploaded.

Sincerely,
Susan Diaz
Federal Investigator
U. S. EEOC Miami District Office
100 SE 2nd Street, Suite 1500
Miami, FL 33131
☎ 786-648-5870
📠 305-808-1758
Email: susan.diaz@eeoc.gov


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From: Michael Elkins <melkins@mlelawfirm.com>
Sent: Thursday, August 06, 2020 1:19 PM
To: SUSAN DIAZ <SUSAN.DIAZ@EEOC.GOV>
Subject: Re: Jessica Sallabarria vs. City of Miami Beach Police Dept 510-2020-04794

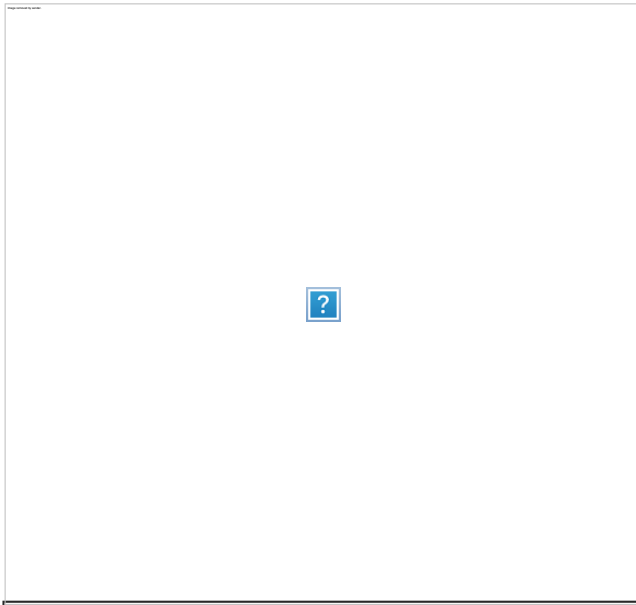
Thank you Ms. Diaz.

I appreciate the professional courtesy.

Kind regards,



Michael L. Elkins
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From: SUSAN DIAZ <SUSAN.DIAZ@EEOC.GOV>
Date: Thursday, August 6, 2020 at 10:34 AM
To: Michael Elkins <MELKINS@mllelawfirm.com>
Subject: Re: Jessica Sallabarria vs. City of Miami Beach Police Dept 510-2020-04794

Dear Mr. Elkins:

I am the assigned investigator in the matter. I will grant you an extension to October 14, 2020 to submit your response.

Sincerely,
Susan Diaz
Federal Investigator
U. S. EEOC Miami District Office
100 SE 2nd Street, Suite 1500
Miami, FL 33131
☎ 786-648-5870
☎ 305-808-1758
Email: susan.diaz@eeoc.gov

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Thursday, April 11, 2024 at 21:54:12 Eastern Daylight Time

Subject: Sallabarria Meeting
Date: Tuesday, October 6, 2020 at 8:24:41 PM Eastern Daylight Time
From: Michael Elkins
To: Michael Pancier, Eugene Gibbons

All,

I am looking to set the meeting for the Sallabarria settlement discussions. I thought it would be easiest to get your best dates and then I will work around those with the City.

My suggestion is you both give me dates for Oct., Nov. and Dec.

I have a packed Oct. and Nov., but I will try to make this happen then, but give me Dec. dates just in case.

Thank you.

Kind regards,



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Thursday, April 11, 2024 at 21:54:32 Eastern Daylight Time

Subject: Re: Sallabarria Meeting

Date: Tuesday, October 6, 2020 at 11:49:45 PM Eastern Daylight Time

From: Michael Pancier

To: Michael Elkins, Eugene Gibbons

Last week in October and 1st week in November are good for me; 3rd week in November good

From: Michael Elkins <melkins@mlelawfirm.com>

Date: Tuesday, October 6, 2020 at 20:24

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons <gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

All,

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Kind regards,



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United States of America



Thursday, April 11, 2024 at 21:55:02 Eastern Daylight Time

Subject: Re: Sallabarria Meeting

Date: Wednesday, October 7, 2020 at 7:31:41 AM Eastern Daylight Time

From: Eugene Gibbons

To: Michael Pancier

CC: Michael Elkins

Mike P's schedule works for me as well. Let's set asap as my schedule fills sporadically.

Thx,

Gene

On Tue, Oct 6, 2020, 23:49 Michael Pancier <mpancier@pancierlaw.com> wrote:

Last week in October and 1st week in November are good for me; 3rd week in November good

From: Michael Elkins <melkins@mlelawfirm.com>

Date: Tuesday, October 6, 2020 at 20:24

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons <gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

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Thursday, April 11, 2024 at 21:55:47 Eastern Daylight Time

Subject: Re: Sallabarria Meeting
Date: Friday, October 30, 2020 at 3:22:10 PM Eastern Daylight Time
From: Michael Pancier
To: Michael Elkins, Eugene Gibbons

Michael

Confirming our meeting on Monday at 10:00am

Please confirm the location and the parking situation.

Thanks

Michael

From: Michael Elkins <melkins@mlawfirm.com>
Date: Tuesday, October 6, 2020 at 8:24 PM
To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons <gibbons@bglaw-pa.com>
Subject: Sallabarria Meeting

All,

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Thursday, April 11, 2024 at 21:56:06 Eastern Daylight Time

Subject: Re: Sallabarría Meeting
Date: Friday, October 30, 2020 at 3:52:16 PM Eastern Daylight Time
From: Michael Elkins
To: Michael Pancier
CC: Eugene Gibbons

Confirmed.

Location is the police department.

There's a parking garage near the station.

Sent from my iPhone

Michael L. Elkins | MLE LAW
[633 S. Andrews Ave. Suite 500 | Fort Lauderdale, FL 33301](#) | [\(954\) 401-2608](#) (C)
melkins@mlelawfirm.com | www.mlelawfirm.com

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On Oct 30, 2020, at 3:22 PM, Michael Pancier <mpancier@pancierlaw.com> wrote:

Michael

Confirming our meeting on Monday at 10:00am

Please confirm the location and the parking situation.

Thanks

Michael

From: Michael Elkins <melkins@mlelawfirm.com>

Date: Tuesday, October 6, 2020 at 8:24 PM

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons
<gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

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Thursday, April 11, 2024 at 21:56:28 Eastern Daylight Time

Subject: Re: Sallabarria Meeting
Date: Friday, October 30, 2020 at 4:00:34 PM Eastern Daylight Time
From: Michael Pancier
To: Michael Elkins
CC: Eugene Gibbons

Mike

What is the city going to do with her time? i.e., time off or admin day? She is scheduled to work Monday 2pm to Midnight

From: Michael Elkins <melkins@mlelawfirm.com>
Date: Friday, October 30, 2020 at 3:52 PM
To: Michael Pancier <mpancier@pancierlaw.com>
Cc: Eugene Gibbons <gibbons@bglaw-pa.com>
Subject: Re: Sallabarria Meeting

Confirmed.

Location is the police department.

There's a parking garage near the station.

Sent from my iPhone

Michael L. Elkins | MLE LAW
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From: Michael Elkins <melkins@mlslawfirm.com>

Date: Tuesday, October 6, 2020 at 8:24 PM

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons
<gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

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Thursday, April 11, 2024 at 21:56:48 Eastern Daylight Time

Subject: Re: Sallabarria Meeting
Date: Friday, October 30, 2020 at 4:03:51 PM Eastern Daylight Time
From: Michael Elkins
To: Michael Pancier
CC: Eugene Gibbons

Our meeting is at 10:00 am, I'm not sure what you're asking.

Sent from my iPhone

Michael L. Elkins | MLE LAW
[633 S. Andrews Ave. Suite 500 | Fort Lauderdale, FL 33301](#) | [\(954\) 401-2608](#) (C)
melkins@mlelawfirm.com | www.mlelawfirm.com

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Date: Friday, October 30, 2020 at 3:52 PM
To: Michael Pancier <mpancier@pancierlaw.com>
Cc: Eugene Gibbons <gibbons@bglaw-pa.com>
Subject: Re: Sallabarria Meeting

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There's a parking garage near the station.

Sent from my iPhone

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Michael

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Thanks

Michael

From: Michael Elkins <melkins@mlelawfirm.com>

Date: Tuesday, October 6, 2020 at 8:24 PM

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons
<gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

All,

I am looking to set the meeting for the Sallabarria settlement discussions. I thought it would be easiest to get your best dates and then I will work around those with the City.

My suggestion is you both give me dates for Oct., Nov. and Dec.

I have a packed Oct. and Nov., but I will try to make this happen then, but give

me Dec. dates just in case.

Thank you.

Kind regards,



Michael L. Elkins

Founder | Partner

MLE Law

A modern, 21st century law firm

m. +1 954 401 2608

e. melkins@mlerlawfirm.com

w. mlerlawfirm.com

s. 633 South Andrews Avenue
Suite 500

Fort Lauderdale, Florida 33301
United States of America



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Thursday, April 11, 2024 at 21:57:06 Eastern Daylight Time

Subject: Re: Sallabarria Meeting
Date: Friday, October 30, 2020 at 4:19:35 PM Eastern Daylight Time
From: Michael Pancier
To: Michael Elkins
CC: Eugene Gibbons

In the event that the meeting runs into the time she is scheduled to work.

From: Michael Elkins <melkins@mlelawfirm.com>
Date: Friday, October 30, 2020 at 4:03 PM
To: Michael Pancier <mpancier@pancierlaw.com>
Cc: Eugene Gibbons <gibbons@bglaw-pa.com>
Subject: Re: Sallabarria Meeting

Our meeting is at 10:00 am, I'm not sure what you're asking.

Sent from my iPhone

Michael L. Elkins | MLE LAW
[633 S. Andrews Ave. Suite 500 | Fort Lauderdale, FL 33301](https://www.mlelawfirm.com) | [\(954\) 401-2608](tel:9544012608) (C)
melkins@mlelawfirm.com | www.mlelawfirm.com

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On Oct 30, 2020, at 4:00 PM, Michael Pancier <mpancier@pancierlaw.com> wrote:

Mike

What is the city going to do with her time? i.e., time off or admin day? She is scheduled to work Monday 2pm to Midnight

From: Michael Elkins <melkins@mlelawfirm.com>
Date: Friday, October 30, 2020 at 3:52 PM

To: Michael Pancier <mpancier@pancierlaw.com>

Cc: Eugene Gibbons <gibbons@bglaw-pa.com>

Subject: Re: Sallabarra Meeting

Confirmed.

Location is the police department.

There's a parking garage near the station.

Sent from my iPhone

Michael L. Elkins | MLE LAW

633 S. Andrews Ave. Suite 500 | Fort Lauderdale, FL 33301 | (954) 401-2608 (C)

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On Oct 30, 2020, at 3:22 PM, Michael Pancier
<mpancier@pancierlaw.com> wrote:

Michael

Confirming our meeting on Monday at 10:00am

Please confirm the location and the parking situation.

Thanks

Michael

From: Michael Elkins <melkins@mlelawfirm.com>

Date: Tuesday, October 6, 2020 at 8:24 PM

To: Michael Pancier <mpancier@pancierlaw.com>, Eugene Gibbons

<gibbons@bglaw-pa.com>

Subject: Sallabarria Meeting

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Thursday, April 11, 2024 at 21:57:25 Eastern Daylight Time

Subject: Re: Sallabarria Meeting
Date: Friday, October 30, 2020 at 4:31:46 PM Eastern Daylight Time
From: Michael Elkins
To: Michael Pancier
CC: Eugene Gibbons

I don't see that happening.

Sent from my iPhone

Michael L. Elkins | MLE LAW
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melkins@mlelawfirm.com | www.mlelawfirm.com

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

Instructions to the person requesting withdrawal: You recently indicated a desire to withdraw your charge. In order to begin such action, please furnish the information below and return this form in the enclosed envelope. As a request for withdrawal of charge is subject to the approval of the Commission, your request will be considered and acted upon when received by this office. Please note that at this time the Commission is still prepared to proceed with your case if you so desire.

CHARGE NUMBER 510-2020-04794

DATE December 18, 2020

AGGRIEVED PARTY

Jessica Salabarría

RESPONDENT(S)

City of Miami Beach, Florida

AGGRIEVED PARTY -- COMPLETE INFORMATION BELOW

(Continue on reverse if necessary)

I am aware that the Federal Government protects my right to file a charge and have been advised that it is unlawful for any person covered by the statutes enforced by EEOC to threaten, intimidate, harass or otherwise retaliate against me because I have filed a charge. I have not been coerced into requesting this withdrawal.

I request the withdrawal of my charge because:

Settlement.

DATE Dec 18, 2020

SIGNATURE


 Jessica Salabarría (Dec 18, 2020 11:57 EST)

FOR EEOC USE ONLY

SEND TO

Susan Diaz
 Federal Investigator
 U. S. EEOC Miami District Office
 Email: susan.diaz@eEOC.gov

- ☐ Withdrawal with Settlement
☐ Withdrawal without Settlement
☐ Approve
☐ Disapprove

DATE

APPROVING OFFICIAL